

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 08-99000-smb

4 Adv. Proc. No. 08-01789-smb

5 - - - - - x

6 In the Matter of:

7
8 BERNARD L. MADOFF INVESTMENT SECURITIES, LLC., et al,

9
10 Debtor.

11
12 - - - - - x

13 SECURITIES INVESTOR PROTECTION CORPORATION,

14 Plaintiffs,

15 v.

16 BERNARD L. MADOFF INVESTMENT SECURITIES, LLC., et al,

17 Defendants.

18 - - - - - x

19
20 U.S. Bankruptcy Court

21 One Bowling Green

22 New York, New York

23
24 November 30, 2016

25 10:08 AM

1 B E F O R E :
2 HON STUART M. BERNSTEIN
3 U.S. BANKRUPTCY JUDGE
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1 HEARING RE: Conference re Correspondence from Lamar Ellis.

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3 HEARING RE: Trustee's Motion and Memorandum to Affirm his
4 Determinations Denying Claims of Claimants Holding an
5 Interest in M&H Investment Group L.P., PJFN Investors
6 Limited Partnership, Kenn Jordan Associates, and Harmony
7 Partners, Ltd.

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25 Transcribed by: Nicole Yawn

A P P E A R A N C E S :

BAKERHOSTETLER

Attorneys for Irving Picard, Madoff Trustee
45 Rockefeller Plaza
New York, NY 10111-0100

BY: STEPHANIE A. ACKERMAN, ESQ.

KEITH R. MURPHY, ESQ.

SECURITIES INVESTOR PROTECTION CORPORATION

Attorney for SIPC
1667 K Street, Northwest
Suite 1000
Washington D.C. 20006-1620

BY: KEVIN H. BELL, ESQ.

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P R O C E E D I N G S

THE COURT: Please be seated.

Good morning.

Madoff?

MR. MURPHY: Good morning, Your Honor.

THE COURT: Good morning.

MS. ACKERMAN: Good morning.

MR. MURPHY: What matter would you like to hear
first, Your Honor?

THE COURT: Pardon?

MR. MURPHY: What matter would you like to hear
first?

THE COURT: Mr. Ellis, are you on the phone?

I don't have Mr. Ellis as registered with Court
Call. So why don't we go through the other ones, and we'll
see if he dials in?

MR. MURPHY: Okay, sure.

(Pause)

THE COURT: Go ahead.

MS. ACKERMAN: Your Honor, Stephanie Ackerman,
Baker & Hostetler, on behalf of Irving Picard, the Madoff
Trustee. We're here today on the trustee's recent motion to
affirm the determination of Madoff claims which were filed
by claimants who invested in one of four limited
partnerships based in Delaware and Florida. M&H Investment

1 Group, PJFN Investors, L.P., Kenn Jordan Associates, and
2 Harmony Partners.

3 The objecting claimants invested their funds in
4 one of the limited partnerships, which in turn, invested in
5 BLMIS. The objecting claimants had no financial
6 relationship with BLMIS and did not own the assets that were
7 entrusted to BLMIS for the purposes of trading securities.
8 The claimants like those in prior motions before the Court
9 are not customers, because in addition to not owning the
10 assets entrusted to BLMIS, they had no control over the
11 funds and were unknown to BLMIS. Thus, denial of these
12 claims is consistent with the many prior decisions before in
13 this liquidation and the Second Circuit's decisions in Kruse
14 and Morgan Kennedy.

15 No objections to the motion have been received.

16 Thus, --

17 THE COURT: Formal or informal?

18 MS. ACKERMAN: Correct, Your Honor. So subject to
19 any questions, we respectfully request the motion be
20 granted.

21 THE COURT: Does anyone want to be heard in
22 connection with the motion?

23 MR. BELL: Yes, Your Honor.

24 THE COURT: Mr. Bell? Okay.

25 MR. BELL: Kevin Bell, from Securities Investor

1 Protection Corporation. We support the trustee's motion and
2 his request for an entry of an order.

3 THE COURT: The courtroom is otherwise vacant. So
4 there are no claimants. Yeah, I'll grant the motion.

5 This is another situation in which indirect
6 investors who invest in BLMIS have filed claims directly as
7 customers. But for the reasons stated in opinions of
8 District Court, Second Circuit, and this Court, they aren't
9 customers because they didn't entrust any money to BLMIS.
10 So your motion is granted, and you can submit an order.

11 MS. ACKERMAN: We will, Your Honor. Thank you.

12 THE COURT: The other matter I have on involves
13 Mr. Ellis.

14 Mr. Ellis, are you on the phone?

15 Mr. Ellis isn't on the phone.

16 You know, I looked at his proposed order to show
17 cause. And it almost seems like he just wants to take a tax
18 loss of some sort.

19 MR. MURPHY: It's not clear, Your Honor. I'm
20 happy to make a record, if you'd like.

21 THE COURT: Go ahead.

22 MR. MURPHY: Okay. Your Honor, we're here this
23 morning in response to a document filed by Mr. Lamar Ellis
24 that is entitled Order for Relief from Stay, as detailed in
25 the trustee's response letter dated August 24th, 2016. It's

1 not really clear exactly what relief is being sought.

2 But his background -- Mr. Ellis had filed 2 claims
3 in 2009. And then on December 8th, 2009 and
4 November 4th, 2010, the trustee denied those claims on the
5 grounds that Mr. Ellis did not have an account with BLMIS
6 short the Lamar Ellis Trust and that he was not a customer.
7 Mr. Ellis filed three objections to that trustee's response.

8 The Bankruptcy Court expunged both of his claims
9 and overruled his objections by order dated April 19th,
10 2012. Subsequently, Your Honor, in July of 2014, Mr. Ellis
11 sent a letter to the Court and the trustee asking that the
12 denials be reversed. He also asked that the Court review
13 his submissions to the Department of Justice to advise him
14 of his rights with respect to the Madoff Victim Fund.

15 On July 14th, 2014, the trustee responded to that
16 letter and indicating that Mr. Ellis did not have an account
17 or any other relationship with BLMIS and that no further
18 action by the trustee was necessary with respect to
19 Mr. Ellis' claims because they were expunged and also that
20 the trustee and the Bankruptcy Court are not involved in the
21 Madoff Victim Fund run by Mr. Breeden.

22 On August 6th, 2014, this Court held a hearing.
23 Mr. Ellis admitted at that time -- he was on the phone --
24 that he may have confused the trustee's liquidation with
25 Mr. Breeden's Madoff Victim Fund. He also indicated that he

1 did not have an account with BLMIS.

2 Subsequently in connection with the most recent
3 filing, Your Honor, my colleague, Ms. Markel, contacted
4 Mr. Ellis by phone. At that time, he advised that he no
5 longer wished to pursue this matter, because he had
6 commenced an action in California. I can reference that
7 action.

8 Mr. Ellis filed a motion for involuntary
9 bankruptcy against --

10 THE COURT: Against?

11 MR. MURPHY: -- against the Madoff Victim Fund in
12 the Central District of California. The judge issued an
13 order to show cause, I believe, in September. On September
14 14th, 2016, Mr. Ellis appeared, either telephonically or in
15 person. I'm not clear.

16 The Court dismissed the matter and overruling him
17 without explaining it. But on October 25th, 2016, that case
18 was closed in the Central District of California.

19 At this point, Your Honor, I believe on October
20 26th, 2016, Mr. Ellis submitted substantially the same
21 documents that he did in July again to this Court. Nothing
22 is much different. Yet we still don't understand the relief
23 he's seeking. We would ask that the Court either dismiss it
24 or mark the matter off the calendar.

25 THE COURT: You know what? He refers in his order

1 to show cause to Energetic, Inc. Do you know what that is?

2 MR. MURPHY: We do not.

3 THE COURT: Because I noticed the reference to
4 Energetic Psychoanalytic Institute and Training School
5 agency account, one of his letters to a Dr. Numerales (ph)
6 in Mississippi.

7 Well, it's not clear what relief Mr. Ellis is
8 seeking.

9 MR. MURPHY: More importantly, Your Honor, I
10 believe -- I'm not sure Mr. Ellis -- I don't believe
11 Mr. Ellis has any standing here. He has no claims or other
12 interest in the case.

13 THE COURT: I don't read his motion as asserting a
14 claim against the Madoff Estate. He seems to be wanting to
15 take some sort of a tax credit for something involving
16 Energetics. Well, in any event, I'll deny the motion for
17 the non-appearance and on the grounds that it's not clear
18 what relief he's seeking from this Court. And as you say,
19 whether or not he even has standing to seek relief before
20 this Court. So why don't you submit an order and provide
21 the order -- that you'll send a copy to Mr. Ellis after it's
22 signed. Okay?

23 MR. MURPHY: We will do that, Your Honor. Thank
24 you.

25 One note I will say that Mr. Ellis filed

1 something, I think, two days ago. He filed a written
2 response to a certificate of service in connection with a
3 claims matter. It's not before you at the moment, but --

4 THE COURT: Do you have it? Do you have a copy of
5 it?

6 MS. ACKERMAN: It has my notes on it, Your Honor.

7 THE COURT: I won't look at them.

8 MR. MURPHY: I have it, Your Honor.

9 THE COURT: You have a clean copy?

10 MR. MURPHY: Yep.

11 (Pause)

12 MR. MURPHY: It seems to have been submitted, Your
13 Honor, in response to a certificate of service filed by the
14 Securities Exchange Commission in connection with the claims
15 matter.

16 MS. ACKERMAN: The motion that's on for December
17 21st, Your Honor.

18 THE COURT: Oh, it's on for December 21st?

19 MS. ACKERMAN: Yes.

20 (Pause)

21 THE COURT: What's on for December 21st that he
22 seems to be objecting to?

23 MS. ACKERMAN: The next motion to affirm
24 determinations of indirect claimants.

25 THE COURT: Is he involved in that?

1 MS. ACKERMAN: He is not, Your Honor.

2 THE COURT: Why don't you just list it in the
3 agenda as an objection, all right?

4 MR. MURPHY: Yes, Your Honor. Thank you.

5 THE COURT: Okay. Submit an order (indiscernible)
6 provide that you'll send a copy to Mr. Ellis.

7 MR. MURPHY: Thank you, Your Honor.

8 THE COURT: Or the Ellis Trust, whichever.

9 MR. MURPHY: Yes.

10 THE COURT: Thank you, sir.

11 MR. MURPHY: Thank you, Your Honor.

12 THE COURT: Okay.

13 MS. ACKERMAN: Thank you, Your Honor.

14 THE COURT: Thank you.

15 Short day.

16 THE CLERK: No, it was perfect.

17 THE COURT: Perfect.

18 (Whereupon, these proceedings were concluded at 10:17
19 AM)

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C E R T I F I C A T I O N

I, Nicole Yawn, certify that the foregoing transcript is a
true and accurate record of the proceedings.

Nicole
Yawn

Digitally signed by Nicole Yawn
DN: cn=Nicole Yawn, o=Veritext,
ou, email=digital@veritext.com,
c=US
Date: 2016.12.09 15:01:53 -05'00'

Nicole R. Yawn

Date: December 1, 2016